

REMARKS

The Examiner's rejection of claims 1, 3 and 4 under 35 U.S.C. 102(b) as being anticipated by Driggott, U.S. Patent No. 1182534 (hereinafter the '534 Patent) is respectfully traversed.

Applicant's amended independent claims 1 and 4 specifically require as a structural element a housing having a cylindrical passage with a smooth interior cylindrical surface that cooperates with a cylindrical spring. Driggott does not disclose a cylindrical housing passage but, in fact, Driggott has a non-cylindrical passage in the housing. Applicant has enclosed enlarged copies of the Driggott drawings of Figures 3, 4 and segments of Figures 1 and 2 of the Driggott '534 Patent and two figures prepared by applicant labeled J-4 for the Examiner's consideration. See Exhibit A. Also, Exhibit B and Exhibit C are enclosed and are discussed below. The Driggott '534 Patent shows aperture or hole 12. In column 2 of the Driggott '534 Patent, Driggott states explicitly in lines 16-24:

"In order to prevent the clamping member 16 from coming into contact with the inside or lower edge of said aperture when swung therein, the latter is provided with a recess 21 opening into said aperture opposite said groove 19.

The walls of said recess are curved transversely and inclined outwardly substantially in an arc of the circle defining the path of swinging movement of clamping member 16."

It is philosophically impossible for something to be "cylindrical" and not to be "cylindrical" at the same time. The hole 12 shown in Driggott cannot be a cylindrical by Driggott's own admission; otherwise, the clamping member would not be allowed to swing on a pivot arm through

an arc into the passageway. Applicant's independent claims 1 and 4 recite specifically that the housing must have a cylindrical passage that includes a cylindrical smooth interior surface.

In order to sustain a 35 U.S.C. 102(b) rejection of anticipation, each and every element of the claimed invention must be shown in a single reference. By design, Driggott does not have a cylindrical passage recited in claims 1 and 4.

Exhibit A is an enlargement of Figures 3 and 4 of the Driggott Patent and also a drawing prepared by the applicant labeled "J-4" that shows the motion of the Driggott shank 17 as the spring 15 proceeds to be mounted inside the housing 13.

Exhibit B shows diagrams prepared by the applicant called "Comparisons" to show how different stones can be mounted and self-centered with applicant's invention that is not possible with the Driggott device.

Exhibit C is discussed below.

Referring now to Exhibit A and, specifically, Figure 4 (enlarged) shows an elliptic space 21 extending around the outside perimeter of the internal clamping member 16, expanding to what at best could be described as an open "oblique cone" at the bottom of the ring, clearly demonstrating that the inside passage 12 in housing 13 of Driggott is NOT cylindrical. Applicant's prepared Figures J-4 also show the arc movement of Driggott's shank 17 connected to the clamping member 16 and the requirement that there be an arc space 21 in housing 13 to permit the arc swing of member 16 to fit into the housing passage 12. It would be physically impossible for the passageway in housing 13 to be a cylinder having a diameter that fits member 16. Applicant has amended the

independent claims to clearly recite the cylindrical structure of the inside passage of the housing. The significance is also shown in Exhibit B. With applicant's cylindrical spring, the spring can be adjusted vertically within the passage to accommodate thickness of various types of stones as shown in Exhibit B. This action of adjusting the depth of the cylindrical spring in the passageway is physically impossible in the Driggott reference because of the arc movement of shank 17. In Exhibit B, Figures D-1, F-1 and H-1 show the relationship of a stone in the spring setting in applicant's invention. Figures D-2, D-3, F-2, F-3, H-3 and H-4 show the relationship of the spring depth to bottom of the mounting in the applicant's invention. Figures E-1 and G-1 (Exhibit B) show the impossibility of achieving a self-centering tight fit for different shaped stones because of the limited arcuate movement of the spring in Driggott. Figure G-4 and top view 20c of Exhibit A indicate where spring 16 shank arm 17 intersect with the Driggot housing and prevent any possible further rotation of the arm. Even a slightly smaller stone would be loose. Figure 20-b of Exhibit A indicates a diameter change of spring 16 if boss 20 was out of position for any reason; this would tilt the stone and off center it. See Exhibit C, elements C, D, and E. It is applicant's position that on its face the Driggott reference is structurally completely different than applicant's claimed invention in the amended claims.

It is also applicant's position that Driggott never teaches that his invention is a permanent setting for stones. In fact, Driggott readily expresses in his own writings that line 66, page 2: "The advantage arising using my device resides in the fact that a stone or gem can be readily removed."

Applicant's stone would have to be cut out of the mounting with a rotating milling bit to be removed from the mounting once the prongs are set.

The Examiner's rejection of claims 2 and 5 under 35 U.S.C. 103 as being unpatentable over Driggott '534 Patent in view of Korwin, U.S. Patent No. 3,670,524 and Chia, U.S. Patent No. 6,629,434 is respectfully traversed. It is applicant's position, based on applicant's statements above concerning the failure of Driggott to show the claimed structure, that the addition of Korwin or Chia in combination with Driggott does not produce the specifically claimed invention in claim 2 and claim 5. Even if the three references cited were combined, the resulting structure would not produce applicant's claimed invention. Claim 2 has been amended to more clearly define applicant's invention to include reference to the "said housing cylindrical interior passage" and "said cylindrical spring." Claim 5 has also been amended to include similar limitations. Korwin shows an article of jewelry that is essentially an ornamental flat disc for holding a coin. Although it mentions a ring mounting, it does not disclose any structure to teach a ring mounting. The tabs 20 shown in Korwin are not counter-sunk prongs mounted near the perimeter of the housing cylindrical interior passage to retain the spring. Chia shows the use of bendable prongs much like Korwin. There is no motivation, suggestion or teaching in any of the references to provide the combination of a cylindrical spring that holds a gemstone in a smooth cylindrical housing and is retained by prongs. There is clearly no teaching to provide counter-sunk bendable prongs to engage the cylindrical spring. Without any motivation, suggestion or teaching in the references, it is believed that the Examiner's rejection of obviousness under 35 U.S.C. 103 cannot be sustained. Further, combining the references would not

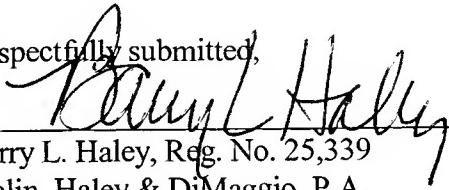
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produce the claimed structure, especially in the absence of a cylindrical spring used with the cylindrical housing.

It is believed that claims 1-5 are allowable on their face as presented.

Any additional charges, including Extensions of Time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,


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